

May 20, 1975

SENATOR CAVANAUGH: And he is unsuccessful. If he's unsuccessful he does not recover under the bill, right?

SENATOR DICKINSON: Right.

SENATOR CAVANAUGH: He is not awarded any attorneys fees? If he is successful he is awarded attorneys fees?

SENATOR DICKINSON: But if he isn't successful, where does . . . where does the opponent recover their attorneys fees? That's the point.

SENATOR CAVANAUGH: Well the point is, as Senator Dickinson says, that this is going to be somehow a profitable thing for people to do, even if they're unsuccessful. That's absolutely false. If they're unsuccessful they're on the hook for their own attorneys fees, which is a big detriment to filing frivolous action. No one is going to file them, an attorney isn't going to file them, unless he thinks he has a reasonable opportunity of securing an attorney fee. The only way he's going to have a reasonable opportunity of security an attorney fee is if the suit is valid. If the suit isn't valid the attorney's going to be out of luck and the individual citizen who filed the action is going to be out of luck, or one of the two of them. So there's a great detriment to filing frivolous suits because there's absolutely no benefit in it. That's as it should be. But there certainly should not be a penalty imposed either for an unsuccessful suit or for a successful suit. That's all that the bill is designed or intended to say. It's a fair and reasonable way to administer the law.

PRESIDENT: Senator Koch would you close argument please.

SENATOR KOCH: Mr. President, members of the body, I support this bill in its totality. I do believe in this one instance that....both parties deserve the same privilege if there is a court case. I am one of those who believes that an individual should question the elected officials when they feel they have a righteous case. I'm also one of those who believe that that city, if they should prevail, should be able to recover any fees if the court so designates. That's the only reason I've done this, because I think it's fair for both parties involved, one or the other whoever prevails. I believe that most of you can justify this in their own minds. Contrary to what Senator Chambers says, I do not always attempt to grant immunity to public officials, nor do I attempt to protect them. I think that every person who has an interest, such as Senator Chambers who many times protects certain interests he has. I think I have the same prerogatives. I don't think it's a matter of selfish interest either.

PRESIDENT: The question is the adoption of the amendment to, is it 325 Mr. Clerk?

CLERK: Yes.

PRESIDENT: . . . to 325. Record your vote.

CLERK: The adoption of the Koch amendment.